

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates to All Actions.

PLAINTIFF(S)

James & Elizabeth Rice

VS.

**3M COMPANY AND ARIZANT
HEALTHCARE, INC.**

**AMENDED EXHIBIT B TO
PRETRIAL ORDER #8 –
FIRST AMENDED MASTER SHORT
FORM COMPLAINT AND JURY
TRIAL DEMAND**

1. Plaintiff, James Rice, states and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, James Rice, is a resident and citizen of the State of New York and claims damages as set forth below.

3. Plaintiff's Spouse, Elizabeth Rice, is a resident and citizen of the State of New York, and claims damages as set forth below.

[Cross out Spousal Claim if not applicable.]

4. Jurisdiction is proper based upon diversity of Citizenship.

5. Proper Venue: The District Court in which remand trial is proper and where

this Complaint would have been filed absent the direct filing order by this Court is
New York Northern District Court.

6. Plaintiff brings this action *[check the applicable designation]*:

☒

On behalf of [himself/herself];

☐

In a representative capacity as the _____ of the
 _____ having been duly appointed as the
 _____ by the _____ Court of
 _____. A copy of the Letters of Administration
 for a wrongful death claim is annexed hereto if such letters are
 required for the commencement of such a claim by the Probate,
 Surrogate or other appropriate court of the jurisdiction of the decedent.

[Cross out if not applicable.]

FACTUAL ALLEGATIONS

7. On or about 2/3/2010, Plaintiff underwent surgery
 during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was
 used during the course and scope of [his/her] Right total knee Replacement [Type
 of Surgery] at the Community Memorial Hospital, 150 Broad Street [medical
 center and address], in Hamilton, NY [city and state], by
 Dr. IVAN GOWAN.

8. Contaminants introduced into Plaintiff’s open surgical wound as a direct and
 proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff
 developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection
 (“DJI”). The Pathogen identified was unknown etiology (*if known*).

9. As a result of Plaintiff's infection caused by the Bair Hugger, Plaintiff has undergone IV Antibiotics, Irrigation & Debridement [Describe treatment(s) received, e.g., revision arthroplasty, wound vac treatment, multiple staged procedures, etc.] on or about 3/26/2010, at Community Memorial Hospital, 150 Broad Street, Hamilton, NY [medical center(s) and address(es)] by Dr(s). IVAN GOWAN. [Cross out if not applicable.]

ALLEGATIONS AS TO INJURIES

10. (a) Plaintiff claims damages as a result of (check all that are applicable):

- ☒ INJURY TO HERSELF/HIMSELF
- ☐ INJURY TO THE PERSON REPRESENTED
- ☐ WRONGFUL DEATH
- ☐ SURVIVORSHIP ACTION
- ☒ ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are applicable): [Cross out if not applicable.]

- ☒ LOSS OF SERVICES
- ☒ LOSS OF CONSORTIUM

11. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

12. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

- ☒ FIRST CAUSE OF ACTION - NEGLIGENCE;



SECOND CAUSE OF ACTION - STRICT LIABILITY;



FAILURE TO WARN



DEFECTIVE DESIGN AND MANUFACTURE



THIRD CAUSE OF ACTION – BREACH OF EXPRESS WARRANTY;



FOURTH CAUSE OF ACTION- BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY LAW OF THE STATE OF New York, N.Y. U.C.C. Law §§ 2-314, et seq. ;



FIFTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT;



SIXTH CAUSE OF ACTION – VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT;



SEVENTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT;



EIGHTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA FALSE ADVERTISING ACT;



NINTH CAUSE OF ACTION- CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER LAW OF THE STATE OF New York, N.Y. Gen. Bus. Law §§ 349, et seq & 350-e, et seq. ;



TENTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION;



ELEVENTH CAUSE OF ACTION- FRAUDULENT MISREPRESENTATION;



TWELFTH CAUSE OF ACTION – FRAUDULENT CONCEALMENT;



THIRTEENTH CAUSE OF ACTION – LOSS OF CONSORTIUM; and



FOURTEENTH CAUSE OF ACTION – UNJUST ENRICHMENT.

In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:

n/a

[Cross out if not applicable.]

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement;
7. Restitution of remedy Defendants' unjust enrichment; and
8. All other relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: 5/24/2017

Respectfully submitted,
BROWN AND CROUPPEN, P.C.
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